

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Marc Felix Jr. et al.¹

v.

Civil No. 13-cv-432-JL

Janet Napolitano, Secretary,
United States Department of
Homeland Security/Immigration
and Customs Enforcement, et al.²

O R D E R

Before the court is Marc Felix's complaint and request for a preliminary injunction ([doc. no. 1](#)). Felix is an alien detained pending deportation at the Strafford County House of Corrections in Dover, New Hampshire. Felix asserts that defendants, the federal officials under whose authority he is detained, have violated his constitutional rights. The matter

¹Felix asserts this action on behalf of himself; eight prisoners incarcerated at the LaSalle Detention Facility in Jena, Louisiana, identified as: Benvenido Tocays, Mackendy Calice, Jean Francois, Henry Pierre, Voltaire Raynold, Sansoir Francois, David Decayette, and Chandeleur Celestin; and "a class of similarly situated individuals."

²Felix names as defendants to this action: Janet Napolitano, former Secretary of the United States Department of Homeland Security ("DHS") and United States Immigration and Customs Enforcement ("ICE"); John Morton, former ICE Director; Kenneth C. Smith, ICE San Diego Field Director; and Todd Thurlow. As explained in the report and recommendation issued simultaneously with this order, the narrative of the complaint also indicates Felix's intent to name Mr. Churchill of the ICE Boston Field Office as a defendant to this action, and the court has so construed the complaint.

is before the court for a preliminary review to determine, among other things, whether the complaint states any claim upon which relief might be granted. See 28 U.S.C. § 1915A(a); LR 4.3(d)(2).

Preliminary Injunction

Felix's complaint (doc. no. 1) contains a request for preliminary injunctive relief. That request has been referred to this court for consideration and a recommendation as to disposition (doc. no. 6). For the reasons stated in the report and recommendation ("R&R") issued simultaneously with this order, the court finds that the request warrants a hearing. The clerk's office is directed to schedule an evidentiary hearing on plaintiff's request for preliminary injunctive relief on November 19, 2013, at 10:00 a.m. Defendant may respond to the request for preliminary injunction prior to that date. If Felix receives the vaccinations he has requested prior to the scheduled hearing date, Felix must so notify this court.

Service

For the reasons set forth in the R&R, the court finds that Felix has stated a claim upon which relief might be granted under Bivens v. Six Unknown Fed. Narcotics Agents, 430 U.S. 33

(1971), alleging that Mr. Churchill, of the United States Department of Homeland Security/Immigration and Customs Enforcement, Boston Field Office, located in Burlington, Massachusetts, refuses to protect Felix from a known risk of serious harm. The complaint (doc. no. 1) will thus be served on Mr. Churchill. See Fed. R. Civ. P. 4(c)(3).

Felix has not prepared a summons form for Mr. Churchill, whose first name is unknown ("FNU"). The clerk's office is directed to prepare and issue the necessary summons using the following address: Mr. FNU Churchill, Boston Field Office, United States Immigration and Customs Enforcement, 10 New England Executive Park, Burlington, Massachusetts, 01803. The clerk's office is also directed to forward the summons, along with copies of the complaint (doc. no. 1), the R&R, and this order, to the United States Marshal's Office ("U.S. Marshal") for the District of New Hampshire. The U.S. Marshal is directed to effect service upon Mr. Churchill, pursuant to Fed. R. Civ. P. 4(e).

The clerk's office is further directed, pursuant to Fed. R. Civ. P. 4(i)(1) and 4(i)(3), to serve the above-listed documents on: (a) the United States Attorney for the District of New Hampshire; (b) the Attorney General of the United States; (c)

Rand Beers, Acting Secretary of the United States Department of Homeland Security; and (d) John Sandweg, Acting Director of United States Immigration and Customs Enforcement, by certified mail, return receipt requested.

Defendant, Mr. Churchill, is instructed to answer or otherwise plead within sixty days of service on Mr. Churchill or on the United States Attorney for the District of New Hampshire, whichever is later. See Fed. R. Civ. P. 12(a)(3).

Plaintiff is instructed that all future pleadings, written motions, notices, or similar papers shall be served directly on the defendant by delivering or mailing the materials to the defendant or his attorney(s), pursuant to Fed. R. Civ. P. 5(b).

SO ORDERED.



Landya McCafferty
United States Magistrate Judge

October 25, 2013

cc: Marc Felix Jr., pro se

LM:jba